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OPINION // EDITORIAL

Editorial: For DOD, all info requests are ‘unusual circumstances’

Express-News Editorial Board
Updated: Dec. 18, 2021 8:47 a.m.



The Department of Defense needs to let the sunshine in when it comes to releasing records related to U.S. involvement in Afghanistan.
Staff Sgt. Brittany Chase/TNS

Correction: An earlier version of this editorial incorrectly stated which federal office is responsible for determining “unusual circumstances” for records. The Defense Department FOIA Division makes these determinations.

When it comes to U.S. involvement in Afghanistan, the Department of Defense doesn’t appear to want the public to know what it already has shared.



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In addition to recently purging its websites of most content about Afghanistan published before 2014 — think photos, videos and press releases — DOD's Freedom of Information Act process also routinely uses a loophole to slow requests. That seems to be the case for our requests for once publicly available information regarding Afghanistan.

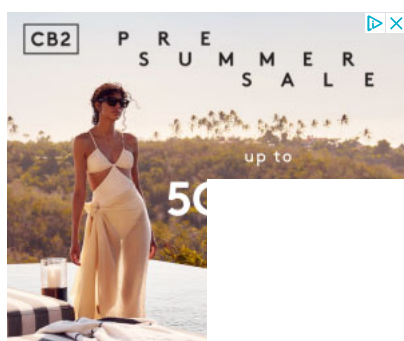
In October, the Express-News Editorial Board made separate FOIA requests for everything purged from DOD websites, the reasoning for vetting this information, file management plans, media response info and a specific press release from 2005.

We received interim response form letters within days but have heard nothing since.

FOIA requires agencies to respond to public information requests in 20 days, but a response does not mean information is necessarily provided. On this front, there are exceptions for "unusual circumstances."

And according to the Defense Department's FOIA response form letters, our requests fell under "unusual circumstances."

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According to Kel McClanahan, executive director of National Security Counselors, a legal group focused on government openness, FOIA laws allow for "unusual circumstance" extensions only "in very specific situations, which are fact and request-specific."

But the Defense Department's FOIA Division apparently claims every request has "unusual circumstances."

Our request, for a once publicly accessible DOD news release from 2005, has "unusual circumstances."

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The office "has included this text in their form letter responses for years, trusting that nobody would be willing to sue them over it," McClanahan said. "Requesters have complained to the Office of Government Information Services about this for years, with no change."

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He added that DOD is "absolutely equitable with their flagrant FOIA violations on this issue."

Officials with both the DOD FOIA Division and the National Archives and Records Administration's Office of Government Information Services did not respond to a request for comment about our requests for information.

According to the letter, our requests are 3,577th in the queue with no estimate of when we'll hear back. It'll be months or maybe years. Perhaps it will take an act of Congress to change this.

Written By
Express-News Editorial Board

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